

POLICY TITLE: Prohibition of Discrimination in Employment Against Persons with Disabilities			NUMBER 114.00
APPROVAL: Kathryn J. Whitmire, Mayor: <i>Kathryn J. Whitmire</i>			Page <u>1</u> of <u>4</u>
ISSUE DATE: Dec. 31, 1991	REVISION DATE:	REVISION NO.	EFFECTIVE DATE: December 31, 1991

Policy Statement: It is the policy of the City of Houston to prohibit employment discrimination on the basis of disability.

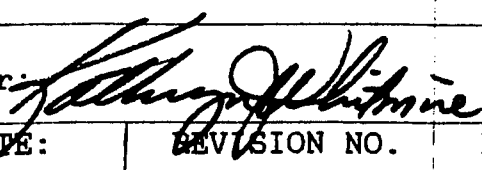
Policy Basis: Americans with Disabilities Act of 1990/Texas Commission on Human Rights Act.

Policy Amplification: On January 26, 1992, the City of Houston will become subject to the Americans with Disabilities Act, which, among other things, prohibits the City from discriminating in its employment practices against persons with disabilities. The Texas Commission on Human Rights Act currently prohibits the City from discriminating in its employment practices. The purpose of this policy is to affirm the City's commitment to comply with those Acts and to provide guidance to City officials and employees as to the requirements of those Acts.

The Acts prohibit the City from discriminating on the basis of disability against a "qualified individual with a disability" in regard to its employment decisions, such as hiring, promotion, assignment, pay, benefits, leaves of absence, training, discipline, discharge and other such actions.

Under the Acts, "disability" means:

- 1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
- 2) a record of such an impairment; or
- 3) being regarded as having such an impairment.

POLICY TITLE: Prohibition of Discrimination in Employment Against Persons with Disabilities			NUMBER 114.00
APPROVAL: Kathryn J. Whitmire, Mayor: 			
			Page <u>2</u> of <u>4</u>
ISSUE DATE: Dec. 31, 1991	REVISION DATE:	REVISION NO.	EFFECTIVE DATE: December 31, 1991

A qualified individual with a disability is a person who satisfies the job-related requirements of the position, who, with or without reasonable accommodations, can perform the essential functions of the job. The Acts do not require the City to hire or otherwise give a preference to a person merely because he or she is disabled, but instead prohibit the City from discriminating against a person who is otherwise qualified for the job merely because the person is disabled.

The Acts do not require the City to hire an individual who would pose a direct threat to the health or safety of the disabled person or others in the workplace.

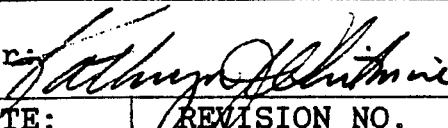
The Acts also require the City to make reasonable accommodations or modifications to the job which would enable a qualified individual with a disability to perform the job. In evaluating whether and what accommodations can be made, the City should consult with the disabled person, with medical personnel if appropriate, or with other persons or organizations with expertise in that disability.

The Acts require a delicate balance between the rights of the disabled and the right of the City to maintain a qualified workforce. They prohibit the City from making arbitrary decisions that persons with disabilities are disqualified from performing certain jobs and instead require the City to determine fitness for a given job on a case by case basis. Because these decisions require an evaluation of medical, legal and occupational requirements, all supervisors who are making a decision which may impact a person with disabilities should consult closely with the Personnel and Legal Departments, as well as the Affirmative Action Division of the Mayor's Office. The regulations promulgated by the Equal Employment Opportunity Commission and the Department of Justice which implement the Act provide guidance for interpreting and applying the Act.

POLICY TITLE: Prohibition of Discrimination in Employment Against Persons with Disabilities			NUMBER 114.00
APPROVAL: Kathryn J. Whitmire, Mayor: <i>Kathryn J. Whitmire</i>			Page <u>3</u> of <u>4</u>
ISSUE DATE: Dec. 31, 1991	REVISION DATE:	REVISION NO.	EFFECTIVE DATE: December 31, 1991

The following lists some but not all actions the City can and cannot take under the Acts:

- 1) The City cannot ask an applicant or employee whether he or she is disabled or inquire into the severity of such disability.
- 2) The City cannot require a medical examination of an applicant prior to making a conditional offer of employment.
- 3) The City cannot use qualification standards, employment tests, or other selection criteria which have the effect of discriminating against persons with disabilities which are not job-related.
- 4) The City cannot discriminate against applicants or employees because they have a family, business, social or other relationship with a person with a disability.
- 5) The City cannot retaliate or otherwise discriminate against an individual who has opposed a practice made unlawful under the Act or participated in a proceeding to enforce the Act, such as filing a complaint with the Affirmative Action Division, Equal Employment Opportunity Commission, Texas Commission on Human Rights or testifying in a proceeding before one of those agencies.
- 6) The City cannot question an applicant about his or her workers compensation history.
- 7) The City must base employment decisions on a disabled person's capabilities at the time and not speculate about a future inability to perform the job.
- 8) The City must maintain employee medical records separately from personnel files.

POLICY TITLE: Prohibition of Discrimination in Employment Against Persons with Disabilities			NUMBER 114.00
APPROVAL: Kathryn J. Whitmire, Mayor: 			Page <u>4</u> of <u>4</u>
ISSUE DATE: Dec. 31, 1991	REVISION DATE:	REVISION NO.	EFFECTIVE DATE: December 31, 1991

- 9) The City may ask any applicant if he or she can perform specific job-related functions and ask the applicant to explain or demonstrate how he or she would perform the functions.
- 10) The City may ask any applicant whether special arrangements are necessary to take a selection test.
- 11) The City may condition an offer of employment upon successful completion of a medical examination if it requires medical examinations of all persons entering the job classification.
- 12) The City may give a physical agility test at any time during the employment process if the test is job-related, and if the test is given to all similarly-situated applicants or employees regardless of disability.
- 13) The City may prohibit use of illegal drugs and alcohol in the workplace. A pre-employment drug test is not considered a medical examination.

Individuals who believe that they have been the victim of discrimination which is prohibited by the Act may file a complaint with the City's Affirmative Action Division, the Equal Employment Opportunity Commission, or the Texas Commission on Human Rights.

Policy Compliance: All employees through the department/division director shall comply from the policy date forward.

Policy Exception: Violations of or exceptions to this policy shall be brought to the attention of the Director of the Affirmative Action Division of the Mayor's Office who shall have the authority to develop, implement, coordinate, monitor and enforce an on-going program and plan of affirmative action for the City of Houston and to investigate and determine the merits of any such violations and/or exceptions.